Editor's note: Appealed -- aff'd, Civ. No. 9692 (D.N.M. Dec. 20, 1972)

R. M. BARTON

IBLA 72-278 Decided August 11, 1972

Appeal from a decision of the New Mexico state office, Bureau of Land Management, dismissing a protest against oil and gas lease offers NM 15011, 15030, 15041, 15044, 15045.

Affirmed.

Oil and Gas Leases: Applications: Sole Party in Interest

An oil and gas lease applicant is not precluded from stating that he is the sole party in interest where he filed through a leasing service and there is no enforceable agreement entered into whereby the applicant is obligated to transfer any interest in the lease if or when a lease issues.

Oil and Gas Leases: Rentals

A protest of a successful drawee's offer in a simultaneous drawing, for the reason that the advance rental payment required under 43 CFR 3112.2-1(a) was submitted in the form of a corporate or other private commercial money order, is properly dismissed where it is determined that such a money order is an acceptable remittance within the meaning of the term "money order" as used in the regulation.

APPEARANCES: Thomas F. McKenna, Esq., for appellant; S. B. Christy IV, Esq., for appellee Central Southwest Oil Company; W. H. McDermott, Esq., for appellee Western Money Orders, Inc.

OPINION BY MR. HENRIQUES

A decision of the New Mexico state office, BLM, dismissed the appellant's protest against the issuance of certain oil and gas leases to the successful applicants as determined by simultaneous drawing procedures.

Two major contentions are pressed on this appeal. The first is premised on the argument that the type of money order used by the offerors to pay the advance rentals is not permissible within the terms of 43 CFR 3123.9(a)(2), now 43 CFR 3112.2-1(a)(2) 1972, which provides, inter alia, that "the advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check."

The gist of the complaint is that the non-guaranteed money order used by the offerors does not meet the implied requirements of the regulation that the payment be guaranteed. This issue has been litigated before. In Georgette B. Lee et al., 3 IBLA 272 (1971), the Board held that the phrase "money order" was not qualified by the terms of the regulation and that the practice of the Department has been to construe ambiguities in the Federal Regulations in favor of public land applicants and against the Department. Further, it noted that the more limiting phrase "post office money orders" was found in 43 CFR 2711.3, relating to bids to purchase public land, and observed that a proper inference could be drawn that the omission of the words "post office" from 43 CFR 3112.2-1(a)(2) was intentional.

In defining the term "money order" as used in 43 CFR 3112.2-1(a)(2) the Board held that so long as the issuing companies complied with state licensing procedures and comported themselves according to state regulations, their money orders would fulfill the regulatory requirements. Appellant argues, however, that in fact, through their methods of operation, many of the companies issuing money orders for gas and oil leases violated state regulations. If such is the case, complaints to and actions by the state regulatory agencies would be a necessary predicate to any action taken by this Department. Certainly the Bureau of Land Management or this Department cannot be expected to police the internal operations of these companies. Indeed, if such policing of money order companies were to be required here, it should, through force of logic be required of any bank which issues a cashier's check that is submitted as payment for the advance rentals. Neither this Department or BLM has the time, expertise, or facilities to carry out such a broad supervisory role, even assuming it had such authority.

The appellant's second point deals with the utilization by the offerors of filing services. He argues that: (a) the filing services have an expectancy interest in the lease; (b) by the clear wording of the statute an offeror must indicate such interests on his drawing entry card; and (c) the offerors' failure, here, to so note must result in the removal of their priorities. Thus, in effect, the contention is that the offeror was not the sole party in interest.

The difficulty with this analysis lies in the characterization of the filing services' expectation as an "interest." 43 CFR 3100.0-5(b) provides that:

> A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, the sole party in interest with respect to a lease in which any other party has any of the interests described in this section * * * An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests."

This Department, in John V. Steffens et al., 74 I.D. 46 (1967), held that the use of a filing service company did not result in removal of the offeror's sole party status. This decision was reaffirmed in R. M. Barton, 4 IBLA 229 (1972), and R. M. Barton, 5 IBLA 1 (1972). The rule remains that so long as there is no enforceable agreement entered into whereby the offeror is obligated to transfer any interest in the lease to the filing service, the offeror will not, on account of merely employing a filing service, be treated other than as the sole party in interest. Appellant has not adduced any evidence that would permit even an inference of the existence of a prior arrangement obligating the offeror to convey any interest in the land to the filing service. This being the case his protest was properly dismissed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Douglas E. Henriques
Member

We concur:

Newton Frishberg
Chairman

Edward W. Stuebing
Member